

HIPAA and HIA

Federal - HIPAA	State – Health Information Act
<p>Who is covered by the federal rule?</p> <ul style="list-style-type: none"> • Health plans • Health care clearinghouses • Health care providers <p>How are these entities defined?</p> <ul style="list-style-type: none"> • <i>Health plan</i>: The definition is very lengthy with multiple subparts and exceptions. Generally, the rule covers group health plans, health insurance issuers, HMOs, Medicare, long-term care, employee plans (2 or more employees), high risk pools, CHAMPUS, etc. It does not include government programs that don't primarily pay for or provide health care, nor government programs directly providing health care or grants for direct provision of health care. • <i>Health care clearinghouse</i>: Public or private entities. Billing service, repricing company, community health management information system, community health information system, and value-added networks. • <i>Health care provider</i>: Any person or organization who furnishes bills or is paid for health care in the normal course of business. Hospitals, nursing facilities, outpatient rehab, home health, hospice, licensed physicians, podiatrists, osteopaths, optometrists, dentists, and chiropractors, diagnostic services, physical therapy, home dialysis, nurse-midwives, psychologists, social workers, etc. Note the rule does not apply to physicians who do not transmit health information in an electronic format. 	<p>Who is covered by the state law?</p> <ul style="list-style-type: none"> • Health care facilities • Health care providers <p>How are these entities defined?</p> <ul style="list-style-type: none"> • <i>Health care facility</i>: hospital, clinic, nursing home, laboratory, office or similar place where a health care provider provides health care to patients. • <i>Health care provider</i>: a person who is licensed, certified, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

<p style="text-align: center;">Federal - HIPAA</p> <p>What information is protected?</p> <ul style="list-style-type: none"> • <i>Health information</i>: any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present or future physical or mental health or condition of an individual or the provisions of health care to an individual or the past, present, or future payment for the provision of health care to an individual. • <i>Note</i>: The authorizing statute permitted rulemaking on electronically transmitted health care information. By rule, the department intends to apply the rule to all health care information in any form. This provision may be challenged • <i>Note</i>: Neither the federal nor state rule covers use of information for non-health related persons, nor by non-health related professionals or health professionals without a state license. Implications for DNA databanks? • <i>Note</i>: Psychotherapists notes are given special protections. • <i>Health care</i>: Care, services, or supplies related to the health of an individual including: preventive, diagnostic therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental conditions or functional status of an individual or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription. 	<p style="text-align: center;">State – Health Information Act</p> <p>What information is protected?</p> <ul style="list-style-type: none"> • <i>Health care information</i>: any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly related to the patient’s health care. The term includes any record of disclosures of health care information. • <i>Note</i>: Also, the Office of the Insurance Commissioner has published proposed rules concerning privacy in the insurance context pursuant to its authority granted under the Patient’s Bill of Rights • <i>Health care</i>: any care, service or procedure provided by a health care provider.
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<p style="text-align: center;">Federal - HIPAA</p> <p>What does the rule require?</p> <ul style="list-style-type: none"> • Generally the rule provides that: <ul style="list-style-type: none"> -health information is confidential; -a patient must release or consent to the use of health information; -a person has the right to notice regarding privacy protections; -a person has a right to access and amend health information; -disclosures of health information must be documented. <p>Does the federal rule preempt state law?</p> <ul style="list-style-type: none"> • It depends on the provision; contrary provisions are preempted <p>What does the rule say about DNA?</p> <ul style="list-style-type: none"> • There is one specific reference to DNA, it provides that covered entities cannot disclose DNA to law enforcement, without a court order, for the purposes of identifying or locating a suspect, fugitive, material, witness, or missing person. <p>What remedies are available?</p> <ul style="list-style-type: none"> • Any person may file a complaint with the Secretary of Health. The rule does not appear to specify what the department will do if it identifies a violation and non-compliance. <p>What is the compliance date for the rule?</p> <ul style="list-style-type: none"> • December 2002. Small plans have until December 2003. 	<p style="text-align: center;">State – Health Information Act</p> <p>What does the rule require?</p> <ul style="list-style-type: none"> • Generally, the statute provides that: <ul style="list-style-type: none"> -disclosure of health information by a health care provider requires the patient’s written authorization; -a patient can examine and copy medical records; -a patient can request corrections; -health care providers must chart all disclosures. <p>Does the federal rule preempt state law?</p> <ul style="list-style-type: none"> • More stringent state provisions are not preempted. More stringent protections are those that restrict disclosure where the federal rule would permit it, unless the disclosure restriction is to the individual, and those provisions that give the individual more rights. Note: State law cannot be preempted when it governs the disclosure of information about a minor to a parent. <p>What does the health care information act say about DNA?</p> <ul style="list-style-type: none"> • Nothing specifically. <p>What remedies are available?</p> <ul style="list-style-type: none"> • A person can bring a civil action under the statute within two years from the violation. Actual damages may be awarded.
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